

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13470, of Beverly B. Jackson, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3101) to use part of the basement of the subject premises for a beauty shop consisting of one booth in an R-1-B District at the premises 3251 "O" Street, S.E., (Square 5539, Lot 11).

HEARING DATE: April 22, 1981
DECISION DATE: May 6, 1981

FINDINGS OF FACT:

1. The subject site is located on the west side of O Street and is known as 3251 O Street, S.E. It is in an R-1-B District.
2. The subject site is approximately 6,820 square feet in area and is improved with a one-story detached house that faces east. The site is flat and basically rectangular in shape.
3. To the south and north of the site along O Street, and to the east of the site are lots of similar size with one and two-story detached houses. To the rear of the site is a concrete retaining wall followed by a parking lot servicing a moderate size shopping center at the corner of Pennsylvania and Branch Avenues. The subject site is within 700 feet of the intersections of O Street and Pennsylvania and Branch Avenues, each of which are heavily travelled. The subject R-1-B District extends for several blocks in all directions, with the exception of a commercial corridor to the south, zoned C-1, extending along Pennsylvania Avenue for approximately 900 feet.
4. The applicant proposes to use a portion of the basement of the subject dwelling for a one-booth beauty salon. The applicant anticipates five or six customers a day, Monday through Friday. The applicant testified that her clients would arrive by car or bus.
5. The subject property is developed with a driveway in excess of sixty feet in length. The driveway leads to the rear of the property. The applicant testified that with the driveway and the space in the rear, the site could accommodate five cars. There is an entrance to the basement in the rear of the property. No client would have to go through the subject residence to reach the beauty salon.

6. The applicant testified that she will not place any kind of sign on the site to advertise the beauty-salon activity. She further testified that she does not advertise and her customers are referred to her.

7. The applicant currently rents a booth at an area beauty salon for sixty dollars per week. She testified that she has breathing difficulties working in commercial salons due to chemicals now in common use. The applicant does not now use chemicals nor will she in the proposed site. The applicant submitted medical evidence of her condition to the record.

8. The applicant testified that she cannot afford to rent a suite or stall in any of the surrounding commercial areas.

9. It has been determined by the Zoning Administrator that a one-person beauty salon operated by an occupant of the home is not a "home occupation" as defined in the Zoning Regulations.

10. The Office of Planning and Development, by report dated April 16, 1981, recommended that the application be denied. In its report the OPD stated that the applicant has indicated that she suffers a peculiar hardship in the pursuit of her livelihood in that she cannot inhale chemicals commonly used in her profession in commercial establishments. The Office of Planning and Development was sympathetic to this problem, and was of the belief that, where possible, the Zoning Regulations should not impinge on the capacities of the citizens of this city to pursue gainful employment in a healthy environment. The OPD considered however, that the hardship in this case was not created by the zoning designation of the subject property, and the property is not unusual in shape or size or in any way impractical for the permitted R-1-B uses. The OPD concluded that the state of health of an individual is not a basis for granting a use variance. The Board so finds.

11. There were letters of record from three neighbors including an adjacent owner in opposition to the application on the grounds that the proposed use is a commercial use that is not appropriate in a residential area and that there are commercial facilities available in the immediate neighborhood. The Board so finds.

12. The Penn-Branch Citizens Association, by letter of April 20, 1981, and by appearance at the public hearing opposed the application on the grounds that the association has consistently opposed the use of residential areas of the community for non-residential purposes. It was the opinion of the Association that the influx of such business activities has a degenerating influence on the residential character of the neighborhood.

13. The Dupont Park Civic Association, by letter of April 21, 1981, recommended that the application be denied on the following grounds:

- a. The area of the proposed beauty salon is zoned R-1-B and the predominate use is for one family detached dwellings. The R-1-B District was never intended to have a mixture of commercial and residential use. It was designed to be a quiet residential area for the exclusive use of one-family detached dwellings. The Board concurs.
- b. There is ample commercial space available in the neighborhood shopping center known as "Penn-Branch" which is adjacent to the "O" Street property noted in the application. Space is available in the shopping center which can be used for a beauty shop. The Board finds this a conclusion unsupported by the evidence.
- c. The 3200 block of "O" Street, S.E., now has an excessive traffic flow problem which is brought on by the Pennsylvania Avenue strip and the commercial area now located adjacent to "O" Street, S.E. The beauty shop will add to the problems of this now existing traffic flow by creating additional traffic traveling up and down the 3200 block of "O" Street, S.E. The Board finds this a conclusion unsupported by evidence.
- d. The granting of a variance to operate a beauty shop or any other commercial operation in the 3200 block of "O" Street, will cause the other properties in the block to decrease in market value rather than increase the value of the property. It was the intention of the majority of the home owners when they purchased homes in the 3200 block of "O" Street that the area would not be used for anything but dwellings and that they would be free of all commercial operations within the block.

This right should not be violated. Even though the Board has the power to grant variances it must take into consideration the predominate use of the R-1-B zoning and the wishes of the majority of the individuals living in this R-1-B area, particularly the 3200 block of "O" Street which is now being considered for a change from its original purpose. The Board finds that it will determine each case on its own merits.

- e. The Board's strict application of the R-1-B zoning requirements will not result in any peculiar and exceptional, practical difficulties to or exceptional and undue hardship on the applicant and to grant the variance as requested would definitely impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board concurs.

14. By letter of February 20, 1981, Councilman H.R. Crawford supported the application on the grounds that the applicant is suffering a hardship. The inhalation of chemicals over the last five years has worsened her medical condition. She has no other means of financial support, and because of her medical condition she will be forced to relinquish the booth that she currently rents at 5317 East Capitol Street, S.E. She has three dependent children and is the sole supporter of her family.

15. There was no further support for the application.

16. Advisory Neighborhood Commission - 7B made no recommendation on the application.

CONCLUSIONS OF LAW:

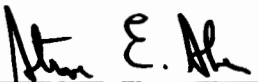
Based on the record, the Boarc concludes that the applicant is seeking a variance from the use provisions, the granting of which requires proof of a hardship that is inherent in the property itself. The Board concludes that such a hardship does not exist. The site is flat and basically rectangular in shape. The site is similar to those in the immediate neighborhood. The Board concludes that there is nothing peculiar about the site that prevents its being used in the completest sense for the purpose for which it is zoned. There is a hardship but it is based on a personal, medical reason. Such a reason is not the type of hardship for which a use variance can be granted. The Board further notes the strong opposition to the application on behalf of property owners in the immediate neighborhood and Civic Associations.

The Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (John G. Parsons, and Connie Fortune to DENY; William F. McIntosh to DENY by PROXY; Charles R. Norris and Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

10 AUG 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."